

*Judicial Compensation
and Benefits Commission*



*Commission d'examen de la
rémunération des juges*

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Ruling Respecting Preliminary Issues: Pre-Appointment Income Study and Representational Costs of Prothonotaries

February 18, 2016

Gil Rémillard (Chair); Margaret Bloodworth (Commissioner); Peter Griffin (Commissioner)

Pre-appointment income study: Counsel for the Attorney General of Canada has requested that the Commission undertake a study of the pre-appointment income of sitting judges appointed between the years 2004 and 2014 by the Federal Government according to a methodology to be established by the Commission in conjunction with the parties and Canada Revenue Agency. Canada Revenue Agency would be asked by the Commission to provide the requested information in accordance with that methodology. The parties accept that this would require between two and four months from initiation to complete.

The Commission received written submissions from counsel for the Attorney General, counsel for the Canadian Superior Courts Judges Association and the Canadian Judicial Council and from counsel for the Federal Court of Canada Prothonotaries.

Representational costs of Prothonotaries: Counsel for the Prothonotaries has requested that the Commission immediately recommend that the prothonotaries receive full funding for their representational costs in connection with the Commission process.

The Commission received written submissions from counsel for the Prothonotaries and counsel for the Attorney General.

The Commission convened a telephone conference call on February 8, 2016 to hear oral submissions from counsel on both requests and reserved its decision.

The Commission has carefully considered the written and oral submissions of counsel on both issues and, after due deliberation, has determined as follows:

With respect to the pre-appointment income study, the Commission is not prepared to undertake or order such a study at this time for the following reasons:

1. At this point, the Commission has received a preliminary indication of the issues that it will have to consider. It has not yet received the detailed submissions in accordance with its established schedule or conducted the formal hearings that will enable the Commission to focus on the exact positions taken by the Attorney General, the Judiciary, the Prothonotaries or any other parties, and the arguments and evidentiary support for them. To commission such a study at this time is premature;
2. Without the benefit of a fully developed set of submissions and a record, the benefits of such a study are not established on what is now before us; and
3. The delay attendant upon such a process will inevitably cause the Commission to be unable to report to the Minister of Justice within the time set by the provisions of the *Judges Act*. If the Minister of Justice is to be requested to permit a delay to its report, the Commission requires a clearer justification for doing so than exists at present.

Accordingly, the Commission declines to order or request a pre-appointment income study at this stage of its proceedings.

With respect to the representational costs for Prothonotaries, the Commission is not prepared to make such a recommendation at this time.

Counsel for the Prothonotaries has raised a number of reasons why he argues that the cost allocation applicable in the *Judges Act* is not reasonable or fair to apply to the Prothonotaries. These include:

1. the disproportionate burden of the costs that members of the group must bear in relation to judges due to their small numbers,
2. the smaller remuneration base, including the lack of an incidental allowance, from which Prothonotaries have to meet the costs and
3. the apparent lack of equity in comparison with Military Judges who are compensated for the total costs of the pay review process applicable to them.

However, in light of the provisions of section 26.3 of the *Judges Act*, the Commission is not satisfied that it is appropriate to make such a recommendation at this early stage in the Commission's process, separate from the report and recommendations that will follow its consideration of detailed written submissions and oral submissions at formal hearings.

Accordingly the Commission declines to issue a recommendation on representational costs for Prothonotaries at this stage of the proceedings.